

Appendix M

RECALL ELECTIONS

Section 5 of the Michigan Campaign Finance Act (MCFA) provides that a recall vote is an election. Therefore, the funds spent or received by elected officeholders to defend themselves from a recall and the funds spent or received by groups supporting or opposing the recall of an elected official are regulated under the MCFA.

A recall vote is not an election to fill an office where the opponents are two or more candidates operating under the same restrictions. In a recall the officeholder is defending against the recall and outside groups (PACs) are supporting or opposing the recall. The MCFA provides that officeholders must use their candidate committees to defend themselves against the recall. However, the contribution limits do not apply to contributions received by the candidate committee to defend the officeholder against the recall provided the contributions are designated for a recall election.

Consistent with the MCFA, recall proponents and opponents and officeholders facing a recall election may not accept contributions from the general treasury funds of corporations, labor organizations, Native American tribes, joint stock companies or anonymous sources. Public resources must not be used to make a contribution or expenditure in support of or opposition to a recall. All regulations and filing requirements of the MCFA must be followed by committees participating in a recall election with the exceptions listed below.

CANDIDATE COMMITTEES INVOLVED IN A RECALL ELECTION

An officeholder facing a recall must use his or her candidate committee to defend against the recall.

The funds must be deposited into and expenditures made from the officeholder's candidate committee account. Candidate committees are urged to secure accounting resources to ensure that all recall contributions and expenditures are separately identified. This will assist the candidate committee in properly reporting recall activity and accounting for recall contributions that are in excess of the limits.

The candidate committee of an officeholder subject to a recall is not subject to the contributions limits set forth by the MCFA provided the contributions are designated for a recall election.

Accepting Contributions Designated for Recall

The committee may continue to accept contributions within the contribution limit whether designated for the recall or not designated for the recall. All contributions received by the candidate committee may be used to defend the officeholder against the

recall. However, an undesignated contribution will be subject to the contribution limit for the next election for the office held by the officeholder.

The candidate committee may accept contributions in excess of the normal contribution limit only if the officeholder's recall is actively being sought. Actively being sought means 1) a committee has been organized to gather petition signatures and to promote a particular officeholder's recall or 2) petition language stating the reason(s) for the recall has been filed with the county clerk for the purpose of a clarity hearing. Whichever of these two conditions is met first determines when the candidate committee may begin to accept contributions in excess of the normal contribution limit.

The period for accepting contributions in excess of the normal contribution limit ends on the day of the recall election or on the day that the appropriate election official finds the petitions insufficient and determines that no recall election will be scheduled. It is recommended that the candidate committee use a designation form that specifies the contributions for the recall election and how any excess contributions remaining after the recall shall be disposed of. Using an acceptable accounting method the candidate committee may be required to dispose of leftover funds. (See "Leftover Funds" below).

Expenditures for a Recall

A recall is an election, therefore, expenses attendant to opposing a recall (including legal fees) are legitimate campaign expenditures that may be paid with candidate committee funds.

A candidate committee of an officeholder facing a recall election may make an expenditure to a political or independent committee, if the purpose of the expenditure is to materially aid the candidate in opposing the officeholder's recall and is not included in the definition of a prohibited contribution or expenditure under the MCFA. Committee records must be maintained that document that the committee receiving the expenditure from the candidate committee made expenditures materially aiding the officeholder in opposing the recall.

Leftover Funds

After the recall election or the date the recall is terminated (petition is insufficient or no petition is filed 180 days after the clarity hearing) it may be necessary to determine whether recall contributions in excess of the contribution limits are part of the leftover funds. A candidate committee will make this determination by using a normally accepted accounting procedure such as LIFO (last in, first out). For example, if the contribution limit is \$500.00 and the last contribution received by the committee was \$700.00, then \$200.00 must be returned to the contributor. The remaining \$500.00 would be the maximum amount the contributor could give to the candidate committee for the next election.

In addition to any excess contributions that must be returned to contributors, section 45 provides that leftover funds can be:

- Voluntarily returned to contributors of the funds;
- Transferred to another candidate committee of the candidate. (Certain restrictions apply, see detailed information on transferring funds in the Candidate Committee Manual);
- Given to a Political Party Committee (state central, congressional district or county);
- Given to a tax-exempt charitable organization as long as the candidate does not become an officer or director of or receive compensation, either directly or indirectly, from that organization. (A committee that chooses to donate any of its remaining assets to a tax-exempt charity must provide verification of the disposition of the funds to their filing official. This verification can be in the form of a receipt or letter of acknowledgement on the charity's letterhead.);
- Given to a House Political Party Caucus Committee if the person was being recalled for the office of State Representative;
- Given to a Senate Political Party Caucus Committee if the person was being recalled for the office of State Senator;
- Given to an Independent Committee; or
- Given to a Ballot Question Committee.

Term Limited Candidates

The candidate committee of an officeholder who cannot seek re-election due to term limits is not prohibited from accepting contributions or making expenditures if subject to a recall provided all other requirements of the MCFA are adhered to by the candidate committee.

POLITICAL COMMITTEES AND INDEPENDENT COMMITTEES (PACs) INVOLVED IN A RECALL ELECTION

Proponents and opponents, other than the candidate's committee, of a recall election must file a Statement of Organization with the appropriate filing official as a political committee or an independent committee.

The filing official for recalls involving a state elective office which includes State Representative or State Senator is the Michigan Department of State, Bureau of Elections. The filing official for recalls involving a local office where the district is solely contained in one county is the county clerk. The filing office for recalls involving a local office where the district is not solely contained in one county is the county clerk of the county with the greatest number of registered voters eligible to vote on the recall.

Contributions to a political or independent committee are not subject to contribution limitations under the MCFA. However, the committee must still abide by the

prohibitions specified under the MCFA such as not accepting contributions from the general treasury funds of corporations, labor organizations, Native American tribes, joint stock companies or anonymous sources. Public resources must not be used to make a contribution or expenditure in support of or opposition to a recall.

A political committee or independent committee may make unlimited expenditures to support or oppose a recall. The committee can further make unlimited contributions to the candidate committee of an officeholder whose recall is actively being sought.

Caucus Committees

A caucus committee may make unlimited expenditures in support of or opposition to a recall of a state elective officeholder. The \$20,000.00 contribution limit on contributions made to a caucus committee is not lifted when the committee participates in a recall election and continues to apply.

POLITICAL PARTY COMMITTEES INVOLVED IN A RECALL ELECTION

Political party committees may receive unlimited contributions and make unlimited expenditures in support of or opposition to a recall. However, the committee must still abide by the prohibitions specified under the MCFA such as not accepting contributions from the general treasury funds of corporations, labor organizations, Native American tribes, joint stock companies or anonymous sources. Public resources must not be used to make a contribution or expenditure in support of or opposition to a recall

REQUIRED FILINGS

As a recall election is an election under the MCFA, all applicable filing deadlines for all campaign statements and reports must be followed. This includes detailed Campaign Statements, Late Contribution Reports, 24 Hour Reports and Special Election Independent Expenditure Reports.